

REMARKS

Upon entry of this amendment Claims 1, 4-11, 15 and 17 are pending in this application.

Applicant acknowledges the withdrawal of objections and rejections as cited in paragraphs 3-13 of the Action dated 1/15/04.

Objection to the Specification

The specification is objected to as missing information at pages 20-21. Appropriate correction will be made upon receiving an indication of allowability of the claims.

Rejection under 35 USC § 101

Claim 6 is rejected under section 101 as not amended to comprise the isolated and purified polynucleotide of Claim 5. Applicant respectfully traverses.

The host cell of Claim 6 comprises an expression vector, a polynucleotide of Claim 5. Applicant submits that such an expression vector has never before existed in nature and invites the Examiner to point to any indication that such expression vector has existed in nature. Specifically, Applicant disputes the Examiner's contention that a bacteria chromosome is an expression vector. Applicant views that interpretation as a strained attempt to impose a meaning on a term that has gained significance in the art. If the Examiner is unable to show that his interpretation of "expression vector" is accepted in the art, or that the expression vector claimed in Claim 5 has existed in nature, Applicant submits that the hand of man is clearly discernable in the construction of the expression vector carried by the host cell. Applicant requests withdrawal of the rejection.

Rejections under 35 USC § 112

Claims 2-7 are rejected under section 112, first paragraph. Claims 2-3 are presently cancelled. Applicant requests that the rejection be withdrawn in view of the cancellation of Claims 2-3.

Claim 6 is rejected under section 112, second paragraph for reciting "A" and not reciting "purified and isolated." Applicant traverses. Applicant is at a loss to understand how an independent Claim beginning with "A" is indefinite and requests a reasoned statement from the Examiner in this point. Claim 6 is amended to recite "purified and isolated." In view of the amendment, Applicant requests the withdrawal of the rejection.

Claims 9-10 and 15 are rejected section 112, second paragraph for reciting “relative activity”. Applicant traverses. Applicant contends that one of skill in the art understands the concept of relative activity. One example of such measurement is provided in the language of Claim 11. That claim is not rejected. However, that is not the only known manner in which relative activity can be determined. The specification clearly teaches the concept, even though it is known to those of skill in the art of assays, and therefore has defined the term. In view of the teaching of the specification and the knowledge of one of skill in the art, Applicant requests withdrawal of the rejection.

Claims 4 and 10 are rejected section 112, second paragraph for lack of antecedent in reciting “the nucleotide sequence of SEQ ID NO:1”. Applicant traverses. SEQ ID NO:1 encodes SEQ ID NO:2. Therefore, the recitation found in Claim 1 a) provides the antecedent basis for the recitations of SEQ ID NO:1 in claims 4 and 10. Applicant requests withdrawal of the rejections.

Rejections 35 USC § 102

Claims 1-6 are rejected under section 102(b) as anticipated by Eveland for reasons of record. Applicant traverses. Claims 2-3 are cancelled. Applicant requests that the Examiner review Applicant’s previous amendment of Claim 1. Applicant does not believe that the Examiner has taken into account Applicant’s previous amendment of Claim 1. Claim 1 no longer recites polynucleotides that have “an amino acid sequence” or that hybridize to polynucleotides encoding SEQ ID NO:2. Claim 1 requires that the polynucleotide encodes the entirety of SEQ ID NO:2, something that the primers of Eveland cannot do, or the complement of a polynucleotide of 1(a), *i.e.*, encoding the entirety of SEQ ID NO:2, also something the primers of Eveland cannot do. Therefore, that primer pair cannot anticipate Claims 1-6. Applicant requests withdrawal of the rejection.

Claims 1-2 are rejected under section 102(b) as anticipated by WO98/03533 for reasons of record. Applicant traverses. Claim 2 is cancelled. Again, Applicant does not believe that the Examiner has taken into account Applicant’s previous amendment of Claim 1. Applicant requests that the Examiner review Applicant’s previous amendment of Claim 1. Claim 1 no longer recites polynucleotides that encode “an amino acid sequence” or that hybridize to polynucleotides encoding SEQ ID NO:2. Claim 1 requires that the polynucleotide encodes the entirety of SEQ ID NO:2, something that the primers of WO98/03533 cannot do, or the complement of a polynucleotide of 1(a), *i.e.*, encoding the entirety of SEQ ID NO:2, also something the primers of WO98/03533 cannot do. Therefore, that primer pair cannot anticipate Claims 1-2. Applicant requests withdrawal of the rejection.

Claims 1-7 remain rejected under section 102(a or e) as anticipated by EP0889123 A2 for reasons of record. Applicant traverses. Claims 2-3 are cancelled. Again, Applicant does not believe that the Examiner has taken into account Applicant's previous amendment of Claim 1. Applicant requests that the Examiner review Applicant's previous amendment of Claim 1. Claim 1 no longer recites polynucleotides that encode "an amino acid sequence" or that hybridize to polynucleotides encoding SEQ ID NO:2. Claim 1 requires that the polynucleotide encodes the entirety of SEQ ID NO:2, the Mur C protein of *Pseudomonas aeruginosa*. EP0889123 A2 discloses a different gene and protein, Mur C of *Staphylococcus aureus*. Because these are two different Mur C genes EP0889123 is not seen to anticipate Claims 1-7. Applicant requests withdrawal of the rejection.

Teleconference

If the Examiner believes the prosecution of this application can be advanced by a teleconference, the Examiner is invited to contact Applicant's undersigned attorney at the Examiner's convenience, at the telephone number provide below.

CONDITIONAL PETITION

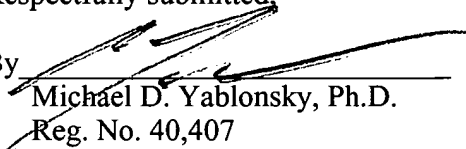
Applicant hereby makes a Conditional Petition for any relief available to correct any defect in connection with this filing, or any defect remaining in this application after this filing. The Commissioner is authorized to charge deposit account 13-2755 for the petition fee and any other fee(s) required to effect this Conditional Petition.

CONCLUSION

In view of the foregoing remarks, it is believed that the grounds of the rejections have been addressed and that Claims 1, 4-11, 15 and 17 are in condition for allowance.

Respectfully submitted,

By


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